IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 11202 of 2007(H)

PETITIONER:

M/S.R.N.P.CINE HOUSE, ATTINGAL,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
PROPRIETOR, MR.N.SREEDHARAN NAIR.

BY ADV. SRI.C.M.STEPHEN

RESPONDENT:

THE ASSISTANT COMMISSIONER,
EMPLOYEES PROVIDENT FUND, REGIONAL OFFICE,
KERALA BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.

BY ADV. SMT. T.N. GIRIJA – SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)NO.11202 OF 2007

DATED THIS THE 3rd DAY OF APRIL, 2007

JUDGMENT

The petitioner challenges Ext.P2 order passed by the respondent under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Ext.P2 order is dated, 30.09.05 and it is seen despatched on 13.11.05. Admittedly, the petitioner received that order in 2005 itself. In fact the petitioner has even filed Ext.P3 application for review on 30.01.06. However, the petitioner has not given any satisfactory explanation for the long delay in challenging Ext.P2. He has also not filed any appeal before the Appellate Tribunal against that order as provided under the Act.

2. The learned counsel for the petitioner would submit that the petitioner has not received any notice for the 7A proceedings. But paragraphs 3 and 4 of Ext.P2 read thus:

> "The employer has acknowledged the receipt of the summons but has failed to attend the enquiry. Therefore, the enquiry was adjourned to 1.8.05. In spite of having received the notice, the employer has again failed to attend the enquiry posted on 1.8.05 and the enquiry again adjourned to 6.9.05 and 28.9.05. Neither the employer nor his representative attended. The employer is fined Rs.500/- for his failure to attend the enquiry and is directed to remit the amount immediately.

> Since the employer did not attend the enquiry on the date originally fixed or on the adjourned date despite having received the summons and as the interest of the beneficiaries will be at stake if the arrears are allowed to be accumulated, I am constrained to determine the dues ex-parte on the basis of Minimum Wages Act in respect of three employees as reported by the Enforcement Officer."

3. In view of the facts disclosed as above, I am satisfied that the petitioner has not satisfactorily explained the long delay in challenging Ext.P2 order and is therefore guilty of unexplained delay and laches. Further it is settled law as decided by two Division Bench decisions of this Court that jurisdiction under Article 226 cannot be invoked to resurrect a time barred cause of action. That being so, I am not inclined to exercise my discretionary jurisdiction in favour of the petitioner.

Accordingly, the writ petition is dismissed.

S. SIRI JAGAN, JUDGE

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